No. 87

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1987

JULIAN I. RICHARDS, an individual,

Petitioner,

vs.

DAVID B. NICHOLSON, Personal Representative of the Estate of Elizabeth Ann Richards, Deceased,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

Julian I. Richards
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Petitioner, pro se

QUESTIONS PRESENTED

1. Does the Court of Appeals of Maryland's reliance on its pro forma order dated December 28, 1987 denying review in Petition Docket No. 395, October Term 1987, issued pursuant to Title 12-203 of the Courts and Judicial Proceedings Article of the Code of Maryland (and used routinely in its denials of petitions for certiorari), constitute reliance upon an independent and adequate state ground barring this court's jurisdiction?

2. In the administration of the estate of his sister has your petitioner been denied his right to due process of law under Section One of the Fourteenth Amendment by the rulings of the Courts of Maryland and the functionings of the involved Judges, Officers and Clerks and the functioning of the fiduciary, David B. Nicholson, as they have borne

on his caveat to the paper-writing purporting to be her last will and testament?

3. Is not the Maryland "Issues From the Orphans' Court" civil action, arising from a caveat to decedent's will, a "suit at common law" within the meaning of the Seventh Amendment and does not the Maryland will caveat proceeding, of ancient lineage [see Kao v. Hsia, 309 Md. 366 (1987)], possess as a basic inherent characteristic, and integral part thereof a fundamental Fourteenth Amendment "liberty," deeply rooted in this nation's history and tradition, or, a Ninth Amendment right, natural or otherwise, not to be denied or disparaged but rather to be recognized, fostered and nourished by our court systems--that being the fundamental right to bring, develop and have tried legal actions, at Law and Equity, with decisions on their merits, permitting this

court to decide whether the Summary Judgment being complained of violates petitioner's Seventh Amendment jury trial rights?

4. Has petitioner's Fourteenth (14th) Amendment right not to ". . . be deprived of . . . property, without due process of law; . . ." been violated by the award by the trial court of a Judgment under Md. Rule 1-341 for sanctions against him in the amount of $11,053.55 plus interest?

The parties to the proceeding in the court whose judgment is sought to be reviewed are as they appear in the caption of the case in this Court.

Other interested persons entitled to noice by Maryland statute ever since the caveat proceeding was initiated are:

(1) Mark Allen Richards
P.O. Box 6017
McLean, Virginia 22106

(2) Ms. Sallie Scott
514 Tuckerman Street, N.W.
Washington, D.C. 20011

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The Court of Appeals of Maryland cases petitioner asks be reviewed, all bearing on his caveat to the paper-writing purporting to be his late sister's will are:

Petition Docket No. 395, September Term, 1987, in which a final order, dated December 28, 1987, denied you petitioner's petition for a Writ of Certiorari to the Court of Special Appeals of Maryland presenting Maryland and United States Constitutional questions, which arose when Summary Judgment was granted, on September 11, 1985 in Civil Action No. 3311, by the Circuit Court for Montgomery County, Maryland, ostensibly ending petitioner's caveat action, which questions continued to compound in complexity as the appeals process unfolded.

No. 90, September Term, 1986, a Per Curiam order, filed January 8, 1987, which, under Maryland Rule 876, ". . . shall be

evidenced by the mandate. . . ." This case began in the Court of Appeals of Maryland with the granting of your petitioner's petition for a writ of certiorari to the Court of Special Appeals of Maryland to review its affirmance of the trial court's Summary Judgment on the "Issues from the Orphans' Court" and on Judgment for Sanctions. It was decided on the briefs and, on oral argument by your petitioner's attorney, and the "will" proponents' attorney, to the full court on the narrow question of whether or not Md. Rule 2-132(c) should have been controlling affording your petitioner protection in the "due process" sense from the trial court's refusal to grant him a continuance in order that new counsel could be obtained and a defense prepared to the pending Summary Judgment motion. As appears from the mandate filed January 8, 1987, the court chose not to rule on the applicability of

Md. Rule 2-132(c) dismissing its writ as having been improvidently granted; however, its mandate said, "Now, therefore, this cause is remanded . . ." causing a confusion in many quarters which said honorable court has chosen with emphatic finality not to resolve as evidenced by its denial of Petition Docket No. 395, September Term, 1987. This confusion is addressed under the Jurisdiction section of this petition.

The Court of Special Appeals of Maryland case petitioner asks be reviewed is: No. 1293, September Term, 1985, Judgment of Affirmance, by a three-judge panel, of the trial court's Summary Judgment filed on June 17, 1985 with dissenting opinion.

The trial court case petitioner asks be reviewed is:

The Summary Judgment rendered at conclusion of the hearing on September 6, 1985, dated September 10, 1985, and filed with the Clerk of the Circuit Court for Montgomery

County, Maryland on September 11, 1985. The court, midway through a busy Friday Motions Calendar, heard the caveatees' two motions addressed to it, "Sitting as the Orphans' Court," as evidenced by the written captions on the Motions, and came up with the September 11, 1985 Judgment, labeled an order, rendered as indicated not only by its caption as an order "In the Circuit Court for Montgomery County, Maryland," but by its content as well--it directs the Clerk to certify to the Orphans Court "findings," which certificate if it exists, was not disclosed in the records of either Civil Action 3311 or Admin. No. 008-01-84--when your petitioner reviewed the case files recently.

JURISDICTION

The jurisdiction to review is believed to be conferred on this court, under Article III, Section (2) of the Constitution, as

a result of the authority created by Title United States Code annotated 1257(3) wherein it is stated, verbatim, at page 144, that:

> Final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court as follows: . . .
>
> (3) By Writ of Certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States. (June 25, 1948, c646, 62 Stat. 929.)

This petition is timely filed because the final judgment of the Court of Appeals of Maryland denying your petitioner's petition for a writ of certiorari in Petition Docket No. 395, September Term, 1987, is

dated December 28, 1987, and petitioner applied for (A-709) and obtained an order extending time to file a petition for a writ of certiorari to and including April 26, 1988, which was signed by Chief Justice Rehnquist on March 22, 1988.

Finalty

Petitioner submits that each of the four final judgments he seeks to have reviewed meet the finality requirements called for by this court's holding in Market Street Railway Company v. Railroad Com. of California, 324 U.S. 548, 89 L.Ed. 1171 at 1176, that:

> Final it must be be in two senses: It must be subject to no further review or correction in any other state tribunal; it must also be final as an effective determination of the litigation and not of merely interlocutory or intermediate steps therein. It must be the final word of a final court.

Market Street Railway, supra. (1945).

The final judgment of the Court of Appeals of Maryland in Petition Docket No. 395, September Term, 1987, has, it appears, ended petitioner's caveat--having upheld the Summary Judgment which ruled on all of the grounds asserted therein--and thus has made final the other three judgments petitioner is asking be reviewed. That conclusion does, however, rest on two assumptions which your petitioner is making as an inexperienced pro se litigant whose intention it is to seek legal counsel to represent him in the event this petition for a writ is issued. The first assumption is that a "caveat to a will action" is a separate proceeding within the framework of a decedent's estate administration and that its final conclusion leaves a caveator no longer a "party in interest" or an "interested person" with standing to take code-provided exceptions to accountings or appeal from an order closing an estate administration. The

second assumption is that the use of the word "remand" by the Court of Appeals of Maryland in its mandate in Petition Docket No. 395 was expected by that court to be accepted as nothing more than a return of the case to a lower court following an aloof refusal of the high court to engage in a discretionary review. They did not so much as proclaim "Let the decision below stand." In view of Maryland Rules 835, 870, 871 and 876, the use of the word "Remand" appeared to petitioner to be the use of a "magic word" which all of us at one time or another have been cautioned against getting hung up on in law school training. What might appear to have been an "inadvertant harmless error" to some was to petitioner a fast and loose misuse of a word made magic when properly couched in context (See Maryland Rule 871 and the effect of a remand), which misuse certainly does not comport with due process of law.

A strong inference of finalty as to the four judgments sought to be reviewed also can be drawn from the Orphans' Court Clerk's notation on his audit request form (See p. 104), dated March 29, 1988, made in reference to the personal representative's accounting (See p. 107), which is labeled as the Seventh and Final one.

As said in Justice Frankfurter's concurrence in Joint Anti-Fascist Refugee Com. v. McGrath, 341 U.S. 123 (1951),

> "Finality," is not, however, a principle inflexibly applied. If the ultimate impact of the challenged action on the petitioner is sufficiently probable and not too distant, and if the procedure by which that ultimate action may be questioned is too onerous or hazardous, "standing" is given to challenge the action at a preliminary stage.

Standing:

As Justice Powell, delivering the opinion

of the Court sets forth in Warth v. Seldin, 422 U.S. 490, 45 L.Ed.2d 343, 95 S.Ct. 2197:

> In its constitutional dimension, standing imports justiciability: whether the plaintiff has made out a "case or controversy" between himself and the defendant within the meaning of Art. III. This is the threshold question in every federal case, determinng the power of the court to entertain the suit. As an aspect of justiciability, the standing question is whether the plaintiff has "alleged such a personal stake in the outcome of the controversy" as to warrant his invocation of federal-court jurisdiction and to justify exercise of the court's remedial powers on his behalf. Baker v. Carr, 369 U.S. 189, 204, 7 L.Ed.2d 663, 82 S.Ct. 691 (1962).

In Warth v. Seldin, Justice Powell goes on to say:

> The Art. III judicial power exists only to redress or otherwise to protect against injury to the complaining party, even though the court's judgment may benefit others collaterally. A federal court's jurisdiction

therefore can be invoked only when the plaintiff himself has suffered "some threatened or actual injury resulting from the putatively illegal action. . . . Linda R. S. v. Richard D., 410 U.S. 614, 617, 35 L.Ed.2d 536, 93 S.Ct. 1146 (1973). See Data Processing Service v. Camp, 397 U.S. 150, 151-154, 25 L. Ed. 2d 184, 90 S.Ct. 827 (1970).[10]

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[10]"The standing question thus bears close affinity to questions of ripeness-- whether the harm asserted has matured sufficiently to warrant judicial intervention and of mootness--whether the occasion for judicial intervention persists. [Citations omitted.] See Anti-Fascist Committee v. McGrath, 341 U.S. 123, 154-156, 95 L.Ed. 817, 71 S. Ct. 624 (1951) (Frankfurter, J., concurring)."

The "case or controversy" between your petitioner and David B. Micholson, de facto personal representative of the estate of my sister, Elizabeth Ann Richards, deceased, who is charged under the common law of Maryland with the task of defending the integrity of the paper-writing purporting to

be her will [See Kent v. Mercantile Safe Deposit & Trust Co., 225 Md. 590, 171 A.2d 723 (1961)] is simply the validity of that paper-writing and of the Judgment for Sanctions against petitioner under Maryland Rule 1-341. His direct "personal stake" is relief from a money judgment in the amount of $11,053--(See p. 100) and an inheritance pursuant to intestate succession of $631,951.46. Clearly the probable, if not certain, threatened injury, and the actual injury from the sanctions judgment itself are being suffered by your petitioner as a result of his having been denied due process of law, and he also will argue that he has a "right" or a "liberty" to initiate, maintain and develop his caveat which is being denied to him by an abridgment of his Seventh Amendment jury trial rights which are interrelated with his statutory rights to discovery and, clearly, by the unconstitutional

denial to him of a continuance, followed immediately by unfair hearing and the arbitrary award of a Summary Judgment against him, all on the same day, in less than one-half hour. Petitioner respectfully submits that the harm he has suffered has matured sufficiently to a ripeness warranting judicial intervention by this court. The flagrant denial of due process at the September 6, 1985 hearing on the Summary Judgment Motion is even more clearly emphasized when Section 5-207(b) of the Maryland Code Estates and Trusts Article is considered (See p. 70). Therein provision is made that when a caveat is filed after an "administrative probate" of a will another probate proceeding be had--"Judicial Probate." Is it not an injustice--a defiance of due process requisites--to cover up the obvious gaping initial void in the administration of the estate involved by trying to pretend that

the procedural and substantive requirements of a "judicial probate" under Maryland law took place at the short hearing on September 6, 1985? The Summary Judgment supposedly ajudicating "Issues from the Orphans Court" makes no reference to the "will" in terms of admitting it to probate.

Substantial Federal Question:

Upon advice of counsel, the question of petitioner's constitutional right to due process of law was not raised in his first appeal from the Summary Judgment (No. 1293, September Term, 1985, Court of Special Appeals of Maryland). It was first raised by his attorney (in the Court of Appeals of Maryland) in the Petition for a Writ of Certiorari to the Court of Special Appeals of Maryland as the question presented for review, to wit, "Does Maryland Rule 2-132, as interpreted by the

trial court, and the Court of Special Appeals, violate due process?" The question was passed upon by the Court of Appeals of Maryland (as indicated in Opinions Below, herein, No. 90, September Term, 1986) by its mandate (See p. 73)--it chose not to clearly, explicitly rule on the questions after having issued a writ of certiorari and held a hearing, but did, however, "Remand" the case, thereupon taking an aloof "wise old owl" position from which it denied petitioner's motion seeking clarification of the intended effect, if any, of the "Remand" (at substantial expenses to all concerned in time, labor, money, concern and strain on family ties) and then went on to deny petitioner's second petition for a writ (Petition Docket No. 395, September Term, 1987), which sought a review of the entire caveat proceeding.

Following the first raising of the Maryland and U.S. constitutional issue of due process in his petition for certiorari, as

aforesaid, your petitioner raised both such Maryland and United States issues time and time again during the state appellate process as the record will clearly disclose.

The substantial federal question presented by this petition is, quite simply, whether or not constitutional Amendments Seven, Nine and Fourteen can provide your petitioner, other litigants in Maryland, and U.S. citizens anywhere, relief from the confusion and other deficiencies inherent in the caveat proceeding in the State of Maryland, and elsewhere in our country and its territories, proudly improve the law, and offer protection from denials of due process, such as those blatantly manifest in your petitioner's case?

Petitioner submits, prayerfully, and modestly he hopes, that he has framed with fair precision this interrelated "Bill of Rights plus Fourteenth" issue of due pro-

cess, which, unlike the honorable Court of Appeals of Maryland, he will attempt to clarify, as best he can, persuading this honorable Court in the ensuing Argument section to look upon it as special and important enough to the needs of our modern society and to the operation of our state and federal legal systems to result in the issuance of the writ sought, full briefings, including amicus curie ones and oral argument. As this court said in New York ex rel. Bryant v. Zimmerman, 278 U.S. 63, 67 (1928), speaking to "Fair Precision," ". . . if the record as a whole shows either expressly or by fair intendment that this was done the claim is to be regarded as having been adequately presented."

Adequate State Ground:

The general rule is as this court's 1906 decision in Chicago, B.Q.R. Co. v. Illinois ex rel Grimwood, 200 U.S. 561, 50 L.Ed. 596, so eruditely states,

> Undoubtedly . . . where the judgment of the state court rests upon an independent, separate ground of local or general law, broad enough or sufficient in itself to cover the essential issues and control the rights of the parties, however the Federal question raised on the record might be determined, this court will affirm or dismiss, as the one course or the other may be appropriate, without considering the question. But it is equally well settled that the failure of the state court to pass on the Federal right or immunity specially set up, of record, is not conclusive, but this court will decide the Federal question if the necessary effect of the judgment is to deny a Federal right or immunity specially set up or claimed, and which, if recognized and enforced, would require a judgment different from one resting upon some ground of local or general law. [Emphasis added.]

The question is whether Section 12-203 of the Courts and Judicial Proceedings article of the Annotated Code of Maryland (See p. 62) provides adequate and non-federally independent enough grounds for the

decision being complained of to prevent this court exercise of jurisdiction with a view to protecting against, and remedying violations of constitutional rights which had to have been considered by the Court of Appeals of Maryland in reaching its decision to deny review in Petition Docket No. 395, September Term, 1987?

The self-protection and insulation made available to the Court of Appeals of Maryland by reason of Section 12-203 is understood and, in a sense, appreciated when the annotation to it is read. It says: "The creation of the Court of Special Appeals and the establishment of the certiorari procedure were designed to decrease the work of the court and its then expanding case load. Walston v. Sun Cab Co., 267 Md. 559, 298 A.2d 391 (1973)." However, the unwillingness of the legislatures to adequately fund our court systems, while ridiculous to the point of being a national disgrace, should not be

permitted to thwart this court's jurisdiction. It is certainly not a court's role to be chagrined in the discharge of its official duties by the acrimonious litigation engaged in by the people and to dispose of these disputes by labeling them as undesirable to review is to dispose of them on a patently inadequate, irrelevant ground it is respectfully submitted.

When constitutional issues have been raised, for them to be disposed of by saying a cursory consideration of the appellate record does not disclose any issue desirable enough or of enough public interest to warrant a review is, it is respectfully submitted, an abdication of responsibility, a simple failure to exercise jurisdiction and not an independent, substantive or procedurally correct ground of decision consonant with a court's great discretionary power to review--its very reason for existence.

Petitioner respectfully submits that this court's decision in McCoy v. Shaw, 277 U.S. 302, 72 L.Ed. 891, 48 S.Ct. 519, could be found to be controlling in this matter, and Section 12-203 found to be so plainly unfounded when invoked as to petitioner's constitutional claim of right, that it may be regarded as essentially arbitrary or a mere device to prevent the review of a decision upon the federal question. Also, potentially dispositive of the issue of jurisdiction is this court's holding in Durley v. Mayo, 351 U.S. 282, 76 S.Ct. 806, where it is said:

> But it is likewise well settled that if the independent (state) ground was not a substantial one, "it will be presumed that the State court based its judgment on the law raising the Federal question, and this court will then take jurisdiction." [Citations omitted.]

How can 12-203 be substantial and

sufficient enough to bar the jurisdiction of this court? It is in your petitioner's case simply an estate-settling device, conveniently invoked by the Court of Appeals of Maryland to avoid confrontation with the difficult task of recognizing improper denials of due process in the courts under its supervision and direction.

The Court of Appeals of Maryland, like all state and federal courts, has constitutional obligations to safeguard personal liberties and uphold federal law, Stone v. Powell, 428 U.S. 465, 49 L.Ed.2d 1067, 96 S.Ct. 3037 (1976).

The fact that, like your petitioner, many citizens before him have been bludgeoned into submission by arbitrary court practices and have resigned themselves to abandoning what they considered they were entitled to in the way of due process is no reason to continue with such callous, primitive procedures. As this Court said

in Powell v. McCormack, 395 U.S. 486, 23 L.Ed.2d 491, 80 S.Ct. 1944 (1969). "That an unconstitutional action has been taken before surely does not render that same action any less unconstitutional at a later date."

Admittedly then, the crucial question is simply whether Section 12-203 is an independent enough state ground to bar this court's jurisdiction?

In Abie State Bank v. Bryan, 282 U.S. 765, 75 L.Ed. 690 (1931), Chief Justice Hughes said:

> As this court said in Enterprise Irrig. Dist. v. Farmers Mut. Canal Co., 243 U.S. 157, 61 L.Ed. 644, 37 S.Ct. 318, supra: "But where the non-federal ground is so interwoven with the other as not to be an independent matter, or is not of sufficient breadth to sustain the judgment without any decision of the other, our jurisdiction is plain."

Petitioner Richards respectfully submits that in its "in the public interest"

aspect, Section 12-203 is so interwoven with the constitutional issues he raised as not to be an independent matter at all. Your petitioner respectfully, but firmly, opines that any increment to the due process body of law would be in the public interest. The inference this court must draw is that, rather than take the time to discover the desirable public-interest results that can and should be brought forth from your petitioner's case, the appeals court chose to make an avoiding, improper denial with regard to petitioner's rights. For a matter to have public interest does not require that it involve a great mass of citizens as they interrelate outside of their residences. The public interest in estates, trusts, wills and will contests is increasing exponentially as our society becomes more affluent.

Entirely aside, however, from the

fact your petitioner most self-righteously avers, that the requirements of Section 12-203 are met to the maximum extent possible by his case--that is, that its review is desirable because it is clearly in the Public interest to have the problems it highlights addressed and solved, it is true that inaction can be a course a state has a right to take in such matters. As the Court of Special Appeals of Maryland itself said in Harris v. State, 249 A.2d 723, 6 Md. App. 7 (1969),

> A State is not required by the Federal Constitution to provide appellate courts or a right to appellate review at all. Griffin v. Illinois, 351 U.S. 12, 18, 76 S.Ct. 585, 100 L.Ed. 891. But when such a right is granted by a State, persons are protected from invidious discriminations with respect thereof or from improper denials of the right by the Due Process and Equal Protection Clauses flowing to the State through the Fourteenth Amendment. See McCoy v. Warden, 1 Md. App. 108, 121, 277 A.2d 375. [Emphasis added.]

Petitioner submits that the use of Section 12-203 to avoid petitioner's right to appellate review is so patently an avoidance of the constitutional issues that this court's jurisdiction is plain.

As is pointed out in the annotation at 24 L.Ed. 837,

> The states cannot, however, in the exercise of control over local laws and practice, vest state courts with power to violate the supreme law of the land, Kalb v. Feurerstein, 308 U.S. 433, 84 L.Ed 370, 60 S.Ct. 343 (1940). Thus, it is sometimes said that whatever springs a state may set for those who are endeavoring to assert rights that the state confers, the assertion of federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice, Davis v. Wechsler, 262 U.S. 22, 68 L.Ed 143, 44 S.Ct. 13 (1923); Staub v. Baxley, 355 U.S. 313, 2 L.Ed.2d 301, 78 S.Ct. 277 (1958); Wright v. Georgia, 373 U.S. 284, 10 L.Ed. 2d 329, 83 S.Ct. 1240 (1963).
>
> Out of the clash between the foregoing fundamental policies has emerged this solution:

Although the familiar principle that the United States Supreme Court will decline to review state court judgments which rest on independent and adequate state grounds, even when those judgments also decide federal questions, applies not only in cases involving procedural state grounds (Fay n. Noia, 372 U.S. 391, 9 L.Ed.2d 837, 83 S.Ct. 822 [1963] [recognizing rule]; Henry v. Mississippi, 379 U.S. 443, 13 L. Ed.2d 408, 85 S.Ct. 564 [19[illegible]]), it is the duty of the Supreme Court to ascertain, in order that federal constitutional guarantees may appropriately be enforced, whether an asserted nonfederal ground independently and adequately supports a state court judgment involving a federal question, NAACP v. Alabama, 357 U.S. 449, 2 L.Ed.2d 1488, 78 S.Ct. 1163 (1958). In other words, the question of when and how default in compliance with state procedural rules can preclude the Supreme Court's consideration of a federal question is itself a federal question, Henry v. Mississippi, 379 U.S. 443, 13 L.Ed. 2d 408, 85 S.Ct. 564 (1965), reh. den. 380 U.S. 926, 13 L.Ed.2d 813, 85 S.Ct. 878. As a result, the Supreme Court's consideration of asserted federal constitutional rights on review of a state court's decision may not be thwarted on the nonfederal basis of the state court's decision that there has not been observance of a procedural rule with which there has been compliance, in both substance and form, in very real sense, NAACP v.

Alabama, 377 U.S. 288, 12 L.Ed. 2d 325, 84 S.Ct. 1302 (1964).

In some cases, the court has viewed the "adequate state ground" issue from the angle of the effect of the state court's decision in terms of fairness, saying, for example, that when a waiver of a federal right is founded on a failure to comply with the appellate practice of a state, the question of United States Supreme Court review of the state decision turns on whether that practice gives litigants a reasonable opportunity to have the issue as to the claimed right heard and determined by the state court, Parker v. Illinois, 333 U.S. 571, L.Ed. 886, 68 S.Ct. 708 (1948), reh. den., 334 U.S. 813, 92 L. Ed. 1744, 68 S.Ct. 1014. Similarly, the court has explained that where a state court allows federal questions to be raised at a late stage in proceedings in state courts and to be determined by such courts as a matter of discretion, the United States Supreme Court is not concluded from assuming jurisdiction and deciding whether the state court action in the particular circumstances is, in effect, an avoidance of the federal right, since a state court may not, in the exercise of its discretion, decline to entertain a constitutional claim while passing upon kindred issues raised in the same manner, Williams v. Georgia, 349 U.S. 375, 99 L.Ed. 1161, 75 S.Ct. 814 (1955).

CONSTITUTIONAL PROVISIONS

Article III

Section 2.

> The judicial power of the United States shall extend to all cases, in law and equity, arising under this Constitution, the Laws of the United States, . . .

Bill of Rights

Seventh VII

> In suits a common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, . . .

Ninth IX

> The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

Fourteenth XIV

Section 1.

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of

United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within it jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

A transition from jury supremacy to jury subordination through judicial decision has taken place in both state and federal courts ever since the adoption of the Bill of Rights in 1791, Galloway v. United States, 319 U.S. 372 (1943); and, as a trend, in an effort to make the system more efficient and fairer to all involved, it is hoped what is taking place in this regard is accomplishing a purpose--improvement of the law. However, in the will caveat action, as petitioner's case demonstrates, it is time to halt that trend, petitioner

respectfully submits. As this court said in Beacon Theatres v. Westover, 359 U.S. 500 (1959),

> Maintenance of the jury as a fact-finding body is of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right to a jury trial should be scrutinized with the utmost care, Dimick v. Schiedt, 293 U.S. 474, 486, 79 L.Ed. 603, 611, 55 S.Ct. 296, 95 ALR 1150, 36 NCAA 184.

In Maryland, discovery procedures and the Summary Judgment are available both in Orphans Court and in the plenary proceeding, known as "Issues From the Orphans' Court." In Ferris v. Higley, 87 U.S. 375 (1874), this court said:

> It is sufficient to say that through it all, to the present hour, it has been the almost uniform rule among the people, who make the common-law of England the basis of their judicial system, to have a distinct tribunal for the establish-

> ment of wills and the administration of the estates of men dying either with or without wills. These tribunals have been variously called Prerogative Courts, Probate Courts, Surrogates, Orphans' Courts, etc. To the functions more directly appertaining to wills and the administration of estates, have occasionally been added the guardianship of infants and control of their property, the allotment of dower, and perhaps other powers related more or less to the same general subject. Such courts are not in their mode or proceeding governed by the rules of the common law. They are without juries and have no special system of pleading. [Emphasis added.]

Maryland has carefully proclaimed that its Orphans' Court sit neither in lawnor in equity, making them truly unique vestiges of the chancery courts and the ecclesiastical courts before them, Alban Tractor Co. v. Bullock, 44 Md. App. 699 (1980), and, with license taken from the dictum in Ferris v. Higley, supra, apparently, the judges of the Circuit Court for Montgomery County, Maryland, who sit

on rotation as Orphans' Court judges, have little inhibition to hark back to the days of secret testimony, etc., and have run slipshod all over petitioner's right to due process of law and his jury trial rights; and the Court of Appeals has denied peitioner his right to appellate review. In his brief, your petitioner will attempt to persuade this court to establish that he has a fundamental "liberty:" to initiate a legal action, maintain it free from excessive court costs and clerks' fees, develop it by discovery and, with the aid of fair and reasonable continuances, try it on the merits, with findings as to the rights involved. A "liberty" denied to him for no good reason pertaining to the other persons involved or to a governmental purpose of any kind, it is almost as though his cause has been sacrificed on the altar to the gods of Arbitrariness, or, as if his tormentors sadistically feel that they may be satisfying not only their

own psychic quirks, but a masochistic streak, they erroneously perceive in your petitioner's psyche.

The use of Summary Judgment on caveat issues is fraught with danger. The caveat is probably 80-90% of the time more akin to a crminal case than a civil action.

The motives and intent of the witnesses, essential ingredients so often in the search for the truth, need to be probed into in open court, in an adversarial environment with cross examination, because the well-coached deponent in a comfortable conference room can too easily pary a probing question and cover up vital details which would otherwise be illuminating as to the true character of his role relating to the testator or someone else's role, perhaps a co-conspirator. Even more important and damaging to truthful fact production is that the pro forma affidavits and carefully honed depositions

are too often enshrined as weighty substantial evidence of great probative value, when they are not. An "Issues" case, arising from a will caveat, should not be decided by Summary Judgment under any circumstances--if your petitioner were doing the deciding, rather, it would be the one unique form of legal action where, if any litigant with enough at stake chose it, be he a caveator or caveatee--there would be a jury trial with a judge inclined to let the jury decide on an issue if a shade more than a scintilla of clear evidence is present from which reasonable inferences can be drawn. That not being the present situation, however, petitioner respectfully submits that in an "Issues" case, Summary Judgment should lie only after the presence or absence of a genuine dispute as to any material fact has been abundantly established by discovery testimony, which could not, in the highest degree of probability, be altered signifi-

cantly by cross-examination in open court.

In petitioner's caveat, he alone had been deposed when the Summary Judgment Motion was made. The two persons petitioner is most suspicious of having unduly influenced his sister had not given any testimony whatsoever. Petitioner, on advice of counsel, had not answered interrogatories because they were not served in compliance with the rules. Therefore, he was aghast when the attorneys for the fiduciary, charged with defending the paper-writing as being his sister's will, refused his request for consent for a continuance so he could obtain new counsel. With little idea what to expect, petitioner went to the hearing to ask for a continuance, expecting his attorney, armed with petitioner's consent, to be there for permission to withdraw, but the judge apparently had permitted that to happen in chambers the

previous day, where the attorney could possibly have said something to the judge, creating the bias which prejudiced petitioner's case the next day. The record transcript of the hearing tells the rest. To assert that this sounds incredible is an understatement. Your petitioner is, literally, mentally punch-drunk as a result of his encounters with what, to him, has truly been a legal system devoid of due process over the past seventeen years--since 1971, when he began a conservatorship of the estate of his late Aunt Edith A. Parsons in the United States District Court for the District of Columbia, which resulted in denials of four petitions for writs of certiorari made to this court and a refusal of the clerk to docket a petition timely filed under the old rules (A-464, October Term, 1978), because it sought writs both to the Court of Appeals of Maryland and the District of Columbia Court of Appeals in the same petition. He

has not abandoned that cause, as the annual notices he has mailed to the clerk attest. If this present petition is granted, petitioner intends to immediately try, as he has many times before, to engage counsel to work with him and represent him in this matter. He is not a fool.

As this court said in Albermarle Paper Co. v. Moody, 422 U.S. 405, 45 L.Ed.2d 280, 95 S.Ct. 2362 (1975), in an opinion delivered by the late Justice Potter Stewart,

> Congress took care to arm the courts with full equitable powers. For it is the historic purpose of equity to "secure complete justice," Brown v. Swann, 10 Pet 497, 503, 9 L.Ed. 5087 (1836); see also Porter v. Warner Holding Co., 328 U.S. 395, 397-398, 90 L.Ed. 1332, 66 S.Ct. 1086 (1946). [W]here federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief. Bell v.

Hood, 327 U.S. 678, 684, 90 L. Ed. 939, 66 S.Ct. 773, 13 A.L.R.2d 383 (1946).

Confident that he, as one who seeks equity will be found to have done equity, petitioner asserts, before God and country, that he approaches this court with clean hands, to demand recognition of his constitutional rights and liberties.

ARGUMENT

In Craig v. Brown, 429 U.S. 190 (1976), Justice Stevens, concurring, said:

> There is only one Equal Protection Clause. It requires every State to govern impartially. It does not direct the courts to apply one standard of review in some cases and a different standard in other cases. Whatever criticism may be levelled at a judicial opinion implying that there are at least three such standards applies with the same force to a double standard.
>
> I am inclined to believe that what has become known as the two-

> tiered analysis of equal protection claims does not describe a completely logical method of deciding cases, but rather is a method the Court has employed to explain decisions that actually apply a single standard in a reasonably consistent fashion. [Footnote eliminated.] [Emphasis added.]

Professor Michael J. Perry's law review article[1] goes on to say:

> If I understand Justice Stevens' point, this article supports his observation. The "single standard is what I will call the legitimacy principle: A law or other governmental action abridging private interests is invalid, even though offending no specific constitutional provision, unless the law serves a legitimate governmental objective. . . . the principle constitutes both the substantive

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[1] "Constitutional 'Fairness': Notes on Equal Protection and Due Process," by Michael J. Perry, Professor of Law, Virginia Law Review, Vol. 63:383 (1977).

imperative of due process[7] and the general requirement of equal protection.[8] [Footnotes 1-6 are omitted.]

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[7] See, e.g., Kelley v. Johnson, 425 U.S. 288, 247 (1976); Williamson v. Lee Optical, Inc., 348 U.S. 483 (1955); West Coast Hotel Co. v. Parrish, 300 U.S. 379 (1937).

[8] See, e.g., City of New Orleans v. Dukes, 427 U.S. 297, 304 (1976); Williamson v. Lee Optical, Inc., 348 U.S. 483 (1955); Railway Express Agency, Inc. v. New York, 336 U.S. 106, 111 (1949) (Jackson, J., concurring).

With due respect to the Court of Appeals of Maryland, Section 12-203 of the Courts and Judicial Proceedings article of the Annotated Code of Maryland does not satisfy the legitimacy principle--its governmental objective is illegitimate--to reduce, if not done arbitrarily and/or capriciously, a burdensome case load may be helpful to the court's judges if their individual consciences are not adversely affected by refusal after refusal to redress the griev-

ances of their litigants, but to afford the court a device by which it can, in a cursory summary manner, shrug off its responsibility to engage in thorough, meaningful, judicial review, exercising its discretion to the fullest permissible extent should not be discouraged by nebulous requirements of "public interest" and "desirability."

Section 12-203 should be declared unconstitutional as a violation of the equal protection clause because its terms are too vague and meaningless to be applied in an interpretive manner enabling indiscriminate classification to be met in the court's exercise of discretion--it is nothing more than an excuse-providing device, limiting the court's ability to exercise its discretionary responsibility and while, let us confidently hope, it is not often used in that way--the image projected is not good--the opportunity for mischievious

evasion of duty to citizens and litigants is temptingly there and it should "go without saying" that many an honest attempt to comply with Sect. 12-203's requirements have no doubt been made, resulting in unnecessarily difficult paths to justice to be taken with "sand traps" of injustice to fall into along the way. To use this court's words in Dunn v. Blumstein 405 U.S. 330, "The Equal Protection Clause places a limit on government by classification, and that limit has been exceeded here." The limit in petitioner's case is the use of the vague, meaningless classification of desirability and public interest. Section 12-203 diverts the Court of Appeals of Maryland from its responsibility to individuals whose claims are "public interest-oriented" only in that their ajudication might result in much-needed increments to the law of due process as it applies to ever-changing, fact situations.

Surely, enactment of Section 12-203, and

its use as a device which denies constitutional rights, is in petitioner's case, together with the actions of the state agents referred to in Questions Presented, state action inhibited by the Equal Protection Clause, Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961). The personal representative, David B. Nicholson's actions are also clearly inhibited (or more accurately, should have been inhibited over the years) by the Equal Protection Clause, Evans v. Newton, 382 U.S. 296 (1966).

Section 12-203 should not prevent this court's jurisdiction from attaching in this case. It is beneath the dignity of the venerable Court of Appeals of Maryland to have to labor with such an image-damaging device functioning.

Petitioner has truthfully asserted that his limited contact with his late sister in her last few years was because:

He loved her and did not want to interfere with her apparent desire to seek happiness, lived 250 miles away, respected her privacy, had little in the way of common interests with her, and, knowing she did not understand why he continued to engage in estate litigation, relied on her attorney's information that she was in good health, hopeful that he would soon relieve both himself and her of the litigation with success in court, which would end the misunderstanding in a mutually happy conclusion. He never doubted her often sublimated, but deep-seated, love and respect for him and hopes he reciprocated it enough that she never lost knowledge of it. Tragically, but most undramatically, and, fortunately in a very private way, petitioner feels both he and his sister have been victims of denials of due process. He is certain that had the estate of their aunt been properly administered, he could have been helpful to her and she and their sister,

Barbara Richards, would be alive today. As for petitioner, he would not have suffered years of economic hardship and loss of many dollars, but would have been able, effortlessly, to redevelop good relationships with his children following divorce from their mother and, also, effortlessly have nipped in the bud the activities which resulted in his bringing the subject caveat case to court. He is convinced his caveat is meritorious and that he is entitled to his "days in court" which, it is highly probable, will be necessary to prove the invalidity of the paper-writing.

Petitioner should have been granted the continuance he sought. It was the first request for one and, as the Court of Appeals of Maryland said in Butkus v. McClendon, 259 Md. 170 (1969),

> While everyone agrees that a litigant should have an opportunity to present his full case

> to the court, a long line of unbroken decisions in this state has established that a ruling on a motion for continuance rests within the sound discretion of the trial court. Unless this discretion is arbitrarily and prejudicially administered by the judge it will not be disturbed on appeal. [Citations omitted.] [Emphasis added.]

Petitioner did not have such an opportunity. As his statement to the court indicates, the delay of a few months in case preparation was, in largest part, a result of an effort to be decent and loving in a family way while, hopefully, trying to open settlement negotiations. The judge was arbitrary and prejudicial, shutting down petitioner's caveat completely in an unfair hearing, before he could engage in any discovery by deposition. This is a ridiculous denial of due process and, as the court can easily sense petitioner's anger, I am sure, it can understand also why petitioner intends to find counsel to represent him if this honorable Court grants the petition.

Petitioner agrees with Professor of Political Science Gary L. McDowell when, in his interesting book, Equity and the Constitution (University of Chicago Press, 1982), he closes the final chapter with the thought that it will be necessary in order to improve the exercise of equity jurisdiction to recover "a stricter procedural distinction between law and equity." After his encounter with Judge John Mitchell, in the Motions Court hearing on September 6, 1985, petitioner submits that the Judge, due to confusion caused by law and equity merger found it a near impossibility to comply with the law, resulting in an enhanced degree of traumatic denial of due process for your petitioner. With the "Issues" motion requiring him to sit only as a law court, he had before him a motion, filed by court officers--the attorneys defending the "will" on behalf of the de facto personal representative, labeled

with a caption stating that it was a motion in the "Orphans' Court."

Now while this may have been harmless error of form not substance, at the completion of petitioner's reading of his two statements, (See transcript in the Record on appeal.) While listenting to the attorney for the personal representative talking of the sanctions motion, legal fees and dollars and cents, the Judge made a remark, not reflected in the Record transcript, that he was now sitting as an "Orphans' Court."

With the Motion for Sanctions before him, also with a caption labeled "Orphans' Court," there is little wonder the judge made the remark that he was transforming himself from a law court judge to an "Orphans' Court" judge, and, granted the Motion. The Record transcript of the hearing clearly indicates that the Judge was acting with speedy resolve to terminate the "Issues" case and the entire caveat proceeding, and, with bias and arbitrariness,

to the complete prejudice of petitioner's rights and to the deteriment of all persons interested in the estate of Elizabeth Ann Richards. However, the Sanctions rule--Md. Rule 1-341, is not applicable to Orphans' Courts (See Blanton v. Equitable Bank Nat'l Assn., 61 Md. App. 158 (1985), so, therefore it is contended that if he was sitting as a law court, Judge Mitchell exceeded his jurisdiction; because that jurisdiction was ancillary only to the Orphans' Court jurisdiction limited to "Issues transferred From the Orphans' Court" by proper order. And, if sitting as the Orphans' Court, Blanton applies and the Judgment is a nullity because the court lacked jurisdiction.

Petitioner will contend that where Orphans' Court matters are concerned in Montgomery County, Maryland, the general jurisdication court cannot sit simultaneously as a law court and and equity court

and that the Court of Appeals should be ordered to take a hard look at its merger of law and equity and the use of the Summary Judgment, as they now are applied in Orphans' Court cases. What happened to your petitioner can only be, clearly and completely, a denial of due process?

Lamenting that the judicial decision erosive process wearing away a major portion of the essential guarantee of the Seventh Amendment continued apace with the Court's opinion in Parklane Hosiery Co. v. Shore, 439 U.S. 322 (1979), then Justice Rehnquist's excellent dissent cast much needed illumination on the dangerous course that trend is taking us on and the worsening of the problem as we go along--hidden truth due to cover ups by the clever and deceitful. The dissent, petitioner believes, should point the way to the improvement in the law petitioner is praying for because it is even more appropriately applicable to the will caveat proceeding than

to the Parklane collateral estoppel circumstances.

The "will caveat case" being, generally, more a criminal case than a civil one, petitioner submits that this honorable Court should adopt and apply Justice White's dissent in Pointer v. Texas, 380 U.S. 400 (1965), where, calling a spade a spade, he said:

> For me this state judgment must be reversed because a right of confrontation is "implicit in the concept of ordered liberty," Palko v. Connecticut, 302 U.S. 319, 82 L.Ed. 288, 292, 58 S.Ct. 149, reflected in the Due Process Clause of the Fourteenth Amendment independently of the Sixth.

Perhaps, the right of confrontation is, in petitioner's case, a penumbra emanating from both the Sixth and Seventh Amendments. Petitioner's denial of his "day in court," as well as his "discovery rights," urges that, as Justice Douglas might well

have found, these denials, quite reasonably related in substantive content to Amendments Six and Seven, and in combination constituting a denial of his right to confront those he suspects of "undue influence" on his sister's testamentary capacity, together create just such an emanation--a fundamental right, waiting patiently for recognition as such. (See concurring opinion of Justice Douglas in Griswold v. Connecticut, 381 U.S. 479 (1965). The strength of the impact of this court's rulings in Hickman v. Taylor, 329 U.S. 495 (1947) support the penumbra theory. The Court ruled that the deposition-discovery rules are to be accorded a broad and liberal treatment, saying, "No longer can the time-honored cry of 'fishing expedition' serve to preclude a party from inquiring into the facts underlying his opponent's case." Petitioner submits that the allegations in his caveat were made with awareness that extensive discovery and, probably a jury trial, would be needed to

establish the invalidity of his sister's "will," however, with firm conviction and belief as to its invalidity, he undertook to establish it. To completely deny him discovery, he submits, is under all the circumstances of the case, in and of itself--a denial of due process. As this court said, in United States v. Proctor and Gamble Co., 356 U.S. 677 (1958), the purpose of liberal discovery rules "is to make a trial . . . more a fair contest with the basic issues and facts disclosed to the fullest practicable extent," (Id. 329 U.S. at 501). "Only strong public policies weigh against disclosure."

CONCLUSION

Your petitioner, Julian I. Richards, has tried to live true to his Christian-Judaic heritage, and scrupulously avoiding criminal involvement during all of his sixty-three years, has stood ready constantly to

help members of his family. He assures this honorable Court that to grant his petition is to take an affirmative action to protect, specifically and generally, the sanctity of the family and the parental role as an enduring American tradition--your petitioner loves his children and grandchildren and, for their sake as well as his wife's and his own, he prays that this court take charge of the administration of the estate of Eliabeth Ann Richards under its equity powers in order to correct the mistakes that have been made in its administration and in the administration of the estate of Edith A. Parsons.

While it is said that Maryland Orphans' Courts sit neither in law nor in equity, this court must find, as petitioner's brief will help it do, that Orphans' Courts are, in substance, courts of equity and, as such, should be governed by much, if not all, of the due process body of law applicable in the courts of general jurisdiction under

analygous circumstances on a case-by-case basis.

In order to shape the remedies and define the scope of the liberty guaranteed by the due process clause and thus to enable petitioner to retrieve and nourish his individual rights and the familial rights and hopes involved in his case, a reading of the court's opinion in Moore v. East Cleveland, 431 U.S. 494 (1977) might prove helpful.

It is said, at p. 502,

> . . . [T]he full scope of the liberty guaranteed by the Due Process Clause cannot be found in or limited by the precise terms of the specific guarantees elsewhere provided in the Constitution. This "liberty" is not a series of isolated points pricked out in terms of the taking of property; the freedom of speech, press, and religion; the right to keep and bear arms; the freedom from unreasonable searches and seizures; and so on. It is a rational continuum

> which, broadly speaking, includes a freedom from all substantial aribtrary impositions and purposeless restraints, . . . and which also recognizes, what a reasonable and sensitive judgment must, that certain interests require particularly careful scrutiny of the state needs asserted to justify their abridgement. Poe v. Ullman, supra, at 542-543 (dissenting opinion).

The only "state need" apparent in the instant case is judicial efficiency and timeliness and here it was carried to extremes, unacceptably, in denial of due process and other constitutional rights, as argued herein.

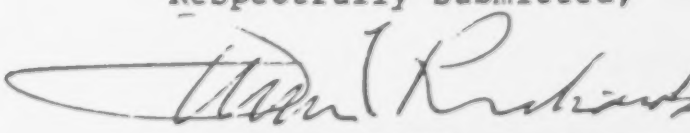
If this court issues the writ sought, petitioner will try to move the Orphans' Court from its stonewalling position of stalemate to obtain approval of the pending seventh and final account to which approval order he will then take exception, which will probably be defended against on the grounds of lack of standing, or, petitioner, if advised by counsel, yet unobtained, will move the

court (Orphans' or general jurisdiction?) for an order transferring the estate administration into equity which, unfortunately, would probably extinguish his jury trial rights in his own case, at least.

In any event, life goes on, and petitioner will, with faith that he is doing equity as best he can, abide the outcome with the knowledge, as set forth by this court in Mathews v. Eldridge, 424 U.S. 47 (1976) that,

> Due process is flexible and calls for such procedural protections as the particular situation demands, Morrissey v. Brewer, 408 U.S. 471, 481, 33 L.Ed.2d 484, 92 S.Ct. 2593 (1972).

Respectfully submitted,

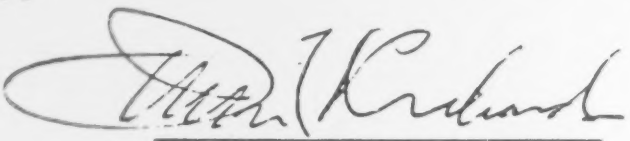


JULIAN I. RICHARDS
109 Bay Colony Drive
P.O. Box 846
Virginia Beach, VA 23451
(804) 425-7699
(804) 425-0378

Petitioner, pro se

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition for a Writ of Certiorari was mailed, with first-class postage prepaid, this 26th day of April, 1988, to all parties required to be served, namely to Ms. Sallie Scott, 514 Tuckerman Street, N.W., Washington, D.C. 20011, and Mark Allen Richards, P.O. Box 6017, McLean, Virginia 22106, residuary legatees, and David B. Nicholson, P.R., c/o James J. Cromwell & Robert W. Keene, Jr., Attorneys at Law, 6610 Rockledge Drive, Suite 400, Bethesda, Maryland 20817.



JULIAN I. RICHARDS

APPENDIX INDEX

COURT RECORDS

Court of Appeals of Maryland:

Court of Special Appeals of Maryland:

Circuit Court of Montgomery County, Maryland:

The Orphans' Court for Montgomery County, Maryland:

§12-201. Certiorari to Court of Special Appeals.

Except as provided in §12-202 of this title, in any case or proceeding pending in or decided by the Court of Special Appeals upon appeal from a circuit court, any party, including the state, may file in the Court of Appeals a petition for certiorari to review the case or proceeding. The petition may be filed either before or after the Court of Special Appeals has rendered a decision, but not later than 30 days after its mandate has been issued. In a case or proceeding described in this section, the Court of Appeals also may issue the writ of certiorari on its own motion. (An. Code 1957, art. 5. §§5C, 21A; 1974, 1st Sp.Sess., ch. 2, §1.)

§12-202. Exceptions

No review by way of certiorari may be granted by the Court of Appeals in a case or proceeding in which the Court of Special Appeals has denied or granted:

(1) Leave to prosecute an appeal in a post conviction proceeding;

(2) Leave to prosecute an appeal in a defective delinquent proceeding;

(3) A petition for certiorari under §12-305 of this title; or

(4) Leave to appeal from a refusal to issue a writ of habeus corpus sought for the purpose of determining the right to bail or the appropriate amount of bail. (An. Code 1957, art. 5, 21A, art. 42, 20; 1973, 1st Sp.Sess., ch. 2, §1.)

§12-203. Action by Court of Appeals.

If the Court of Appeals finds that review of the case described in §12-201 is desirable and in the public interest, the Court of Appeals shall require by writ of certiorari that the case be certified to it for review and determination. The writ may issue before or after the Court of Special Appeals has rendered a decision. The Court of Appeals may by rule provide for the number of its judges who must concur to grant; the writ of certiorari in any case, but that number may not exceed three. Reasons for the denial of the writ shall be in writing. (An. Code 1957, art. 5 §§ 5D, 21A; 1973, 1st Sp. Sess., ch.2, §1.)

Maryland Rule 1-341, Bad Faith--Unjustified Proceeding states:

> In any civil action, if the court finds that the conduct of any party in maintaining or defending any proceeding was in bad faith or without substantial justification the court may require the offending party or the attorney advising the conduct or both of them to pay to the adverse party the costs of the proceeding and the reasonable expenses, including reasonable attorney's fees, incurred by the adverse party in opposing it.

Rule 2-132(c) Striking of Attorney's Appearance

> **(c) Notice to Employ New Attorney.** When the appearance of the moving attorney is stricken and the client has no attorney of record and has not mailed written notification to the clerk of an intention to proceed in proper person, the clerk shall mail a notice to the client's last known address warning that if new counsel has not entered an apparance within 15 days after service of notice, the absence of counsel will not be grounds for a continuance. The notice shall also warn the client of the risks of dismissal, judgment by default, and assessment of court costs.

In pertinent part, Maryland Rule 2-325, Jury Trial, states:

> (a) Demand. - Any party may elect a trial by jury of any issue triable of right by a jury by filing a demand therefor in writing either as a separate paper or separately titled at the conclusion of a pleading and immediately preceding any required certificate of service.
>
> (b) Waiver. - The failure of a party to file the demand within 15 days after service of the last pleading filed by any party directed to the issue constitutes a waiver of trial by jury.

Annotated Code of Maryland. Maryland Rules (1)

> **Rule 2-501. MOTION FOR SUMMARY JUDGMENT**
>
> **(a) Motion.** -- Any party may file at any time a motion for summary judgment on all or part of an action on the ground that there is no genuine dispute as to any material fact and that the party is entitled to judgment as a matter of law. The shall be supported by affidavit if filed before the day on which the adverse party's initial pleading or motion is filed.

(b) Response. -- The response to a motion for summary judgment shall identify with particularity the material facts that are disputed. When a motion for summary judgment is supported by an affidavit or other statement under oath, an opposing party who desires to controverts any fact contained in it may not rest solely upon allegations contained in the pleadings, but shall support the response by and affidavit or other written statement under oath.

(c) Form of Affidavit. -- An affidavit supporting or opposing a motion for summary judgment shall be made upon personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavit.

(d) Affidavit of Defense Not Available. -- If the court is satisfied from the affidavit of a party opposing a motion for summary judgment that the facts essential to justify the opposition cannot be set forth for reasons stated in the affidavit, the court may deny the motion or may order a continuance to permit affidavits to be obtained or discovery to be conducted or may enter any other order that justice requires.

(e) Entry of Judgment. -- The court shall enter judgment in favor of or against the moving party if the pleadings, depositions, answers to interrogatories, admissions, and affidavits show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law. By order pursuant to Rule 2-602(b), the court may direct entry of judgment (a) for or against one or more but less than all of the parties to the action, (2) upon one or more but less than all of the claims presented by a party to the action, or (3) for some but less than all of the amount requested when the claim for relief is for money only and the court reserves disposition of the balance of the amount requested. If the judgment is entered against a party in default for failure to appear in the action, the clerk promptly shall send a copy of the judgment to that party at the party's last known address appearing in the court file.

(f) Order Specifying Issues of Facts Not in Dispute. -- When a ruling upon a motion for summary judgment does not dispose of the entire action and a trial is necessary, the court, on the basis of the pleadings, depositions, answers to interrogatories, admissions, and affidavits and, if necessary, after interrogating counsel on the record, may enter an order specifying the issues or

facts that are not in genuine dispute. The order controls the subsequent course of action but may be modified by the court to prevent manifest injustice.

Maryland Rule 870, Decision by this Court -- Finality, states:

> Except as otherwise provided by Rules 835 (Dismissal of Appeal) and 871 (Remand), this Court will either affirm or reverse the judgment from which the appeal was taken, or direct the manner in which it shall be modified, changed or amended. The decision of this Court shall be final and conclusive.

Maryland Rule 871, Remand.

a. For Further Proceedings, states:

> If it shall appear to this Court that the substantial merits of a case will not be determined by affirming, reversing or modifying the judgment from which the appeal was taken, or that the purposes of justice will be advanced by permitting further proceedings in the cause, either through amendment of the pleadings, introduction of additional evidence, making of

additional parties, or otherwise, then this Court, instead of entering a final order affirming, reversing or modifying the judgment from which the appeal was taken, may order the case to be remanded to the approprite court. Upon remand to the appropriate court, such further proceedings shall be had by amendment of the pleadings, introduction of additional evidence, making of additional parties, or otherwise, as may be necessary for determining the action upon its merits as if no appeal had been taken and the judgment from which the appeal was taken had not been entered; provided, however, the order entered by this Court remanding case, and the Opinion of this Court on which said order is passed, shall be conclusive as to the points finally decided thereby. In such an order remanding a case, the Court will express the purpose for so remanding and in its opinion filed with said order will determine all questions which may have been properly presented.

Maryland Rule 876, Mandate.

A. To Evidence Order of this court, states:

The order of this Court dismissing an appeal or affirming or

ing or reversing in whole or in part, or modifying the judgment from which the appeal was taken, or awarding a new trial, or entering a final judgment pursuant to Rule 875 (Final Judgment in This Court) shall be evidenced by the mandate of this Court which shall be certified under the seal of this Court by the Clerk. It shall not be necessary for any formal order or judgment other than the mandate to be signed or transmitted to the lower court.

b. When to Be Issued.

Unless otherwise ordered by this Court, the mandate shall be issued as of course by the clerk upon the exporation of thirty days after the opinion of this Court has been filed or the order or judgment of this Court has ben entered, and shall be transmitted by him to the appropriate court.

C. To Contain Statement of Costs.

The mandate shall contain a statement of the costs taxable to the appellant and the appellee and of the order of this Court awarding costs.

D. Effect of Mandate.

When the mandate has been transmitted the appropriate court shall proceed according

court shall proceed according to the tenor and directions thereof.

In pertinent part, Section 2-105, Plenary Proceeding, Estate and Trusts Article states:

> a) Determination of an issue of fact. - In a controversy in the court, an issue of fact may be determined by the court.
>
> b) Transfer of determination to law court. - At the request of an interested person made within the time determined by the court, the issue of fact may be determined by a court of law. When the request is made before the court had determined the issue of fact, the court shall transmit the issue to a court of law.
>
> c) Order based on determination. - After the determination of the issue, whether by the court or after transmission to a court of law, the court shall order an appropriate judgment or decree.

Section 5-207(b), Caveat proceeding, states:

> (b) Effect of petition. - If the petition to caveat is filed before the filing of a petition for

probate, or after administrative probate, it has the effect of a request for judicial probate. If filed after judical probate the matter shall be reopened and a new proceeding held as if only adminstrative probate had previously been determined. In either case the provisions of Subtitle 4 of this title apply.

Julian I. Richards	)	In the
	)	
	)	Court of Appeals
v.	)	
	)	of Maryland
DAVID B. NICHOLSON,	)	
Personal Representative	)	Petition Docket
of the Estate of	)	No. 395
Elizabeth Ann Richards,	)	
Deceased	)	September Term,
	)	1987
	)	
	)	(No. 306,
	)	September Term,
	)	1987
	)	Court of Special
	)	Appeals)

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Robert C. Murphy
Chief Judge

Date: December 28, 1987

Julian I. Richards * IN THE

* COURT OF APPEALS

v.

* OF MARYLAND

DAVID B. NICHOLSON, *
Pers. Rep. of the No. 90
Estate of Elizabeth *
Ann Richards,
Deceased * September Term,
1986

* * * * * * * *

MANDATE

TO THE HONORABLE THE JUDGES OF THE

COURT OF SPECIAL APPEALS OF MARYLAND:

WHEREAS the case of Julian I. Richards v. David B. Nicholson, Pers. Rep. of the Estate of Elizabeth Ann Richards, Deceased came before you and wherein the judgment of the said Court of Special Appeals was duly entered on the twenty-seventh day of June, 1986 as appears from the transcript of the record of the said Court of Special Appeals which wa sbrought into the Court of Appeals of Maryland by virtue of a writ of certiorari dated September 8, 1986; and

WHEREAS in the September Term, 1986

the said cause came on to be heard before the Court of Appeals of Maryland;

ON CONSIDERATION WHEREOF, it is ordered and adjudged on January 8, 1987 by this Court that a writ of certiorari having been granted and heard, ORDERED by the Court of Appeals of Maryland that the writ of certiorari be, and it is hereby, dismissed as being improvidently granted. Costs to be paid by the appelant. Mandate to issue forthwith.

NOW, THEREFORE, THIS CAUSE IS REMANDED to you in order that such proceedings may be had in the cause in conformity with the judgment of this Court as accord with right and justice, and the Constitution and laws of Maryland, the said writ notwithstanding.

WITNESS The Honorable Robert C. Murphy, Chief Judge of the Court of Appeals

of Maryland, this eighth day of January, 1987.

Alexander L. Cummings
Clerk
Court of Appeals of Maryland

Costs:

Appellant brief	$ 62.40
Apellee brief	163.20
Joint Record Extract	492.00

Julian I. Richards * IN THE

* COURT OF APPEALS

v.

* OF MARYLAND

DAVID B. NICHOLSON, *
Pers. Rep. of the No. 90
Estate of Elizabeth *
Ann Richards, September Term,
Deceased * 1986

* * * * * * * *

ORDER

The petition for writ of certiorari in the above entitled case having been granted and heard, it is this 8th day of January, 1987

ORDERED, by the Court of Appeals of Maryland, the writ of certiorari be, and it is hereby, dismissed as being improvidently granted. Costs to be paid by appellant. Mandate shall issue forthwith.

/s/ Robert C. Murphy
Chief Judge

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND
No. 1293
September Term, 1985

JULIAN I. RICHARDS

v.

DAVID B. NICHOLSON, Personal Representative of the Estate of Elizabeth Ann Richards

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Moylan,

Wilner,

Biship,

J.J.

Opinin by Moylan, J.

Dissenting Opinion by Bishop, J.

Filed : June 27, 1986

The appellee, David B. Nicholson, Esq., is the Personal Representative under the Last Will and Testament of Elizabeth Ann Richards. Elizabeth Ann Richards made her Will on January 5, 1982, and died on December 19, 1983. The Will was admitted to probate on January 4, 1984.

The appellant, Julian I. Richards, is the brother of the late Elizabeth Ann Richards. On July 2, 1984, just two days short of six months after the Will was admitted to probate, the appellant filed a Verified Petition to Caveat the Will.

Following the production of documents and the taking of the deposition of the appellant, the Orphans' Court of Montgomery County submitted to the Circuit Court for Montgomery County, on November 29, 1984, seven issues for factual resolution. On July 29, 1985, the appellee filed a Motion for Summary Judgment and a Motion for Sanctions, Expenses, and Attorney's Fees. In support of the Motion

for Summary Judgment, the appellee filed affidavits of the attesting witnesses to the Will and of himself, the Personal Representative; the deposition of the appellant, and the appellee's answer to interrogatories.

Following a hearing before Judge John J. Mitchell on September 6, 1985, Judge Mitchell granted the appellee's Motion for Summary Judgment as to all seven issues transferred from the Orphans' Court. He granted, as well, the appellee's Motion for Sanctions, finding that the Caveat proceeding has been instituted and maintained without adequate or substantial justification. Judge Mitchell awarded the appellee attorney's fees in the amount of $11,053.55. From Judge Mitchell's written order of September 11, 1985, the appellant has taken this appeal. He raises the following three contentions:

1) That Judge Mitchell erred in denying his request for a continuance;

2) That Judge Mitchell erred in gr̂nating the Motion for Summary Judgment; and

3) That Judge Mitchell abused his discretion in granting the Motion for Sanctions and in charging him with the appellee's attorney's fees.

Both the first and third issues involve the exercise of discretion by the trial judge, with respect to which reversal would only be mandated if the appellant should show a clear abuse of that discretion. Since the insubstantiality of the appellant's claim, directly affecting the summary judgment issue, is inevitably a factor in assessing the two exercises of discretion, we will turn to the summary judgment issue first.

We share Judge Mitchell's chargrin at the filing of this Caveat. The only apparent reason for the Caveat is that the decedent's estate was appraised at $650,000, and the appellant, as her only surviving sibling, hoped to come in for a share of

it. When he did not, he filed a "boiler plate" Caveat that made every claim of impropriety conceivable. Without a shred of supporting evidence, he alleged the following five grounds for attacking the Will:

1) That the purported Will was not executed by the decedent, nor attested to in accordance with law;

2) That the decedent did not understand the meaning, intent, and consequences of the purported Will;

3) That the decedent was not legally competent to execute a Will;

4) That the Will was the result of undue influence exercised and practiced upon the decedent by a person or persons in a confidential relationship with her; and

5) That the Will was the result of fraudulent representations and misrepresentations by interested parties in a confidential relationship with the decedent and that such parties engaged in a conspiracy designed to influence the decedent unduly.

The deposition of the appellant himself revealed that his contact with his sister

over recent years had been very sporadic. One of the primary legatees of the decedent's Will was her nephew, Mark Richards, who happens to be the appellant's son.

With respect to the claims of impropriety other than incompetence of the testatrix, the only factual support for the claims is the appellant's "firm belief" that such things must have happened (although he has no evidence that they happened) because that would be the only explanation as to why his sister did not leave her money to him.

His claim that his sister was incompetent to make a Will is based upon the fact that two years after she made her Will, she died of cirrhosis of the liver. Without any remote suggestion that medical or lay testimony was available to support is theory, he simply deduces that cirrhosis of the liver shows that the testatrix must have been an alcoholic. He deduces further that this condition preceded the making of the Will because

he saw his sister on one occasion before her death and her eyes were "puffy." His total factual predicate for testamentary incompetence is his observation of "puffiness" around the eyes.

Notwithstanding the fact that the Caveat was not filed until seven months after the death of the testatrix and that his deposition was not taken until four months afer his filing of the Caveat, the answers of the appellant in th course of that deposition reveal the utter lack of any factual basis for the Caveat. The conclusion that he was on a "fishing expedition," at best, or a course of harassment, at worst, screams out from the pages of the deposition.

A few of his responses give a representative flavor of his pattern of response throughout the deposition.

He was asked initially about his claim that his sister never executed the Will in question:

"Q. Could you tell me what facts you have or what information you have that supports the allegation that the paper writing was not executed by Elizabeth Ann Richards or attested by her in compliance with the laws of the State of Maryland?

Mr. McCartin: May we have a moment?

Mr. Cromwell: Sure.

The Witness: It is my conviction, based on firm belief, that the facts substantiating that allegation will be developed from discovery.

By Mr. Cromwell:

Q: It is correct to sate that at least at hte present time, you do not know of any facts that support the allegation that the will was not executed by her or attested to in compliance with the laws of the State of Maryland?

A. That is correct, sir.

Q. And I gather it follows from that that you have a belief that that is true, but you do not, at least at the present time, have any facts which support the allegation?

A. As I stated, sir, I have a firm conviction based on belief, yes.

Q. Could you tell us what the basis of that belief is, why you believe the will wasn't properly executed or what suspicion about it?

A. I have no suspicion about it, sir."

The appellant was examined further as to the basis for his claim that the attestation was improper:

"Q. Is there anything about the way in which the attestation clause is written that give syou to believe that there is some legal defect in the way the will was executed?

What I am trying to find out, what issue we are facing here, if there is any.

A. The attestation clause you referred to, Mr. Cromwell--

Q. Yes, sir.

A. --doesn't establish in my mind clearly that it, the attestation did in fact take place.

Q. So, it is your contention that--

A. It may very well not have taken place.

Q. It may not have taken place.

Is it a suspicion it didn't, or do you have any facts at the present time that indicate that a Mary Collins and a Dorothy Ownes did not in fact sign the originals, where it appeared to be their signatures by photocopy of Deposition Exhibit Number 1?

A. No facts at this time, sir."

With respect to the allegation that the testatrix did not understand the meaning, intent, and consequences of the Will, the appellant's basis for so concluding was equally insubstantial:

"Q. Paragraph 3(b) states that, 'The meaning, intent and consequence of the terminology of the said paperwriting were not understood by the said decedent, nor made known to her at or before the time of execution.'

Have I correctly read the allegation?

A. Yes.

Q. Could you tell me what facts you have to support that allegation?

A. No facts at this time, sir.

Q. You have made the allegation but I gather do not, at least

at the present time, have any acts which support that allegation.

A. I have a firm conviction based on belief.

Q. And what supports that conviction?

A. No facts at this time, sir."

He candidly admitted that he had never discussed her Will with his sister:

"Q. Did she ever discuss her will with you?

A. No.

Q. Did you ever talk to her at any time during her lifetime about the fact that she was going to make a will or what she planned to do with her estate?

A. No.

. . .

Q. But as far as your sister Betty's will is concerned, at least within a ten or twelve-year period before she dided, you din't discuss with her what she was going to do with her will?

A. That is correct.

Q. And is it simply that the subject never came up or that you both tried to stay away from it?

A. The subject never came up."

The basis for the appellant's conclusion that his sister was an alcoholic (even that, ipso facto, would not prove testamentary incompetency) was equally speculative:

"Q. And no one has told you that she was an alcoholic. I gather this is a conclusion that you drew from your own observations?

A. That's correct.

Q. And what did you observe about her that led you to conclude that she was an alcoholic?

A. Only the puffiness that I have related to you.

Q. Did she ever drink in your presence, take a drink in your presence?

A. What time span?

Q. Say, during any of the times that you saw her from 1970 through January 1982?

A. No, she did not. I think I can make that flat statement, no, she did not."

With respect to the conspiratorial fraud allegedly exercised upon his sister, the appellant's basis for so concluding is equally without substance:

> "Q. What fraudulent misrepresentations to you believe have been--I gather at this point you don't have any facts to support that, just suspicion or belief that that may have happened.
>
> A. That is correct.
>
> Q. What do you think was done to Betty to fraudulently induce her to execute the will which is Deposition Exhibit Number 1?
>
> A. I wish I knew, sir. I do not know at this point."

Judge Mitchell quite accurately concluded that the only basis for the Caveat in this case was the appellant's disappointment and anger at not having been included in his sister's Will. The granting of the Motion for Summary Judgment was absolutely correct.

The insubstantiality of the appellant's claim, moreover, was a factor that Judge Mitchell considered as he exercised his disretion first with respect to the continuance and then with respect to sanctions.

The appellant had been represented through the pendency of this case by Thomas M. McCartin, Esq. On August 27, 1985, Mr. McCartin filed a Motion for Leave to Withdraw Appearance based upon irreconcilable differences between him and the appellant as to how the case should be conducted. The appellant consented to the withdrawal of his lawyer's appearance. Judge Mitchell formally granted the Motion to Withdraw on September 5, 1985. On September 6, the scheduled date for the hearing on the Motion for Summary Judgment, the appellant requested a continuance to permit him to obtain new counsel. Judge Mitchell denied the request, stating:

> "Well, I ahve read this file from cover to cover, sir, and I would like to know what your

> basis was in the first place for even bringing this claim. You have been asked directly in your depotion what was the basis for you to file a caveat, and you did not know of any. You said, 'I hope I might find out in the future through discovery.' . . . I am not going to continue this case, sir. In my judgment, it is a case that never should have been filed in this court house."

The granting or denying of a continuance is a matter vested in the trial judge's discretion and will not be disturbed on appeal, absent a clear abuse of that discretion. Brooks v. Best, 242 Md. 350 (1966); Quarles v. Quarles, 62 Md.App. 394 (1985); In Re: McNeil, 21 Md.App. 484 (1974); Colburn v. Colburn, 20 Md.App. 346 (1974).

Although under many circumstances, a modest continuance to permit the appearance of new counsel might be called for, the appraisal of the circumstances is left to the discretion of the trial judge. In this case, the judge concluded that the administration of a large estate had been

held up for almost a year for frivolous and outrageous reasons. He obviously concluded that he was not going to brook one hour of additional delay. Under the circumstances of this case, we are not prepared to say that the judge was guilty of a clear abuse of discretion.

From everything that has been said heretofore, it follows that the judge's conclusion that this Caveat was frivolous was not clearly erroneous and his imposition of sanctions was not an abuse of discretion. The bulk of the dollar amount of the attorney's fees, moreover, had already been approved by the Orphans' Court. The ultimate assessment of attorney's fees was within the discretionary range vested in the trial court. We see no clear abuse.

JUDGMENT AFFIRMED;

COSTS TO BE PAID BY APPELLANT.

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

No. 1293

September Term, 1985

JULIAN I. RICHARDS

v.

DAVID B. NICHOLSON, Personal Representative of the Estate of Elizabeth Ann Richards

---

Moylan
Wilner
Bishop,

JJ.

Dissenting Opinion by Bishop, J.

Filed: June 27, 1986

I dissent from the majority decision affirming the trial court's denial of a continuance. While I recognize that appellant's challenges to the will, from this record, seem to be frivolous, appellant was entitled to his day in court with the assistance of counsel. Rule 2-132 provides, in relevant part;

> (b) By Motion. -- When the client has no other attorney of record, an attorney wishing to withdraw an appearance shall file a motion to withdraw. Except when the motion shall be accompanied by the client's written consent to the withdrawal or the moving attorney's certificate that notice has been mailed to the client at least five days prior to the filing of the motion, informing the client of the attorney's intention to move for withdrawal and advising the client to have another attorney enter an appearance or to notify the clerk in writing of the client's intention to proceed in proper person. Unless the motion is granted in open court, the court may not order the appearance stricken before the expiration of the time prescribed by Rule 2-311 for responding. The court may deny the motion if withdrawal of the

appearance would cause undue delay, prejudice, or injustice.

(c) Notice to Employ New Attorney. -- When the appearance of the moving attorney is stricken and the client has no attorney of record and has not mailed written Notification to the clerk of an ntention to proceed in proper person, the clerk shall mail a notice to the client's last known address warning that if new counsel has not entered an appearance within 15 days after service of the notice, the absence of counsel will not be grounds for a continuance. The notice shall also warn the client of the risks of dismissal, judgment by default, and assessment of court costs.

The chronology of events in the case sub judice was a follows:

August 27, 1985: Appellant's trial counsel files Motion to Withdraw Appearance.

September 5, 1985: Trial court formally grants the Motion to Withdraw.

September 6, 1985: Summary judgment hearing held as scheduled, appellant's request for continuance denied. Appellee's Motion for Summary Judgment granted, and appellee's Motion for Sanctions granted.

September 10, 1985: Written order of trial court filed granting summary judgment to appellee and awarding appellee $11,053.55 in attorney's fees pursuant to the Motion for Sanctions.

September 13, 1985: Clerk's Notice to Employ New Counsel pursuant to Rule 2-132(c) mailed to appellant by which appellant was "warned" of the risks of dismissal, judgment by default and assessment of court costs.

In light of this chronology, I would conclude that the trial court acted percipitously in denying appellant's Motion for Continuance.

At the hearing, appellant expressly stated that he was not representing himself in proper person and wanted a continuance so that he could obtain a new attorney. Pursuant to the letter and intent of Rule 2-132, the trial court should have either denied the Motion to Withdraw, or have given appellant the required notice and fifteen days to obtain a new attorney prior to ruling on the Motion for Summary

Judgment and the Motion for Sanctions. I would therefore reverse the trial court's denial of the Motion for Continuance, and in turn the summary judgment and award of attorney's fees. I would remand the case to allow a new hearing on summary judgment at which appellant could be represented by an attorney.

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, MARYLAND

IN THE MATTER OF	)
THE ESTATE OF	) Civil Action No. 3311
ELIZABETH ANN	) Admin. No. 008-01-84
RICHARDS	)

ORDER

The Caveatee's Motion for Summary Judgment and Motion for Sanctions having been read and considered and the matter having been heard in open Court, it is by the Circuit Court for Montgomery County, Maryland, this 10th day of September, 1985,

ORDERED, that the Caveatee's Motion for Summary Judgment be and the same is hereby granted, and the Clerk is directed to certify to the Orphan's Count, in answer to the issues presented, finding by this Court that the answer to each of the issues one through five inclusive is "Yes", and that the answer to issues six and seven is "No"; and it is further,

ORDERED, that the Caveatee's Motion for Sanctions be and the same is hereby

granted, the Court having found that Julian I. Richards, Caveator herein, has instituted and maintained this proceeding without substantial justification, and in connection therewith, it is further,

ORDERED, that judgment be entered in favor of David B. Nicholson, Personal Representative of the Estate of Elizabeth Ann Richards, against Julian I. Richards, in the amount of $11,053.55, which the Court finds to be reasonable expenses incurred by the Caveatee in opposing and defending this proceeding thus far.

_____

Honorable John J. Mitchell
Circuit Court for Montgomery
County, Maryland

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, MARYLAND
Sitting as the Orphan's Court

IN RE: THE ESTATE OF ELIZABETH ANN RICHARDS	: Civil Action No. 3311 : Admin. No. 008-01-84 :

MOTION FOR SUMMARY JUDGMENT

David B. Nicholson, Personal Representative of Elizabeth Ann Richards, by his attorneys, James J. Cromwell, Robert W. Keene, Jr., and Beckett, Cromwell & Myers, P.A., moves, pursuant to Rule 20501, for summary judgment on the ground that there is no genuine dispute between the parties as to any material fact, and that the said David B. Nicholson, Personal Representative, is entitled to judgment as a matter of law and as grounds thereof respectfully represents unto this Honorable Court as follows:

1. That the Verified Petition of the Caveator, Julian I. Richards, alleges five grounds for the relief prayed, namely:

a. that the January 5, 1982

purported Will of Elizabeth Ann Richards, was not executed by her, nor attested to in accordance with law.

b. That Elizabeth Ann Richards did not understand the meaning, intent and consequences of the purported Will.

c. That Elizabeth Ann Richards, at the time the purported Will was executed, was not legally competent to execute a Will.

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, MARYLAND
Sitting as the Orphan's Court

IN RE: THE ESTATE OF ELIZABETH ANN RICHARDS	:	Civil Action No. 3311 Admin. No. 008-01-84

MOTION FOR SANCTIONS
EXPENSES AND ATTORNEY'S FEES

David B. Nicholson, Personal Representative of the Estate of Elizabeth Ann Richards, by and through his attorney, Beckett, Cromwell & Myers, P.A., James J. Cromwell and and Robert W. Keene, Jr., moves, pursuant to Maryland Rule of Procedure 1-311 and 1-341, that this Court assess reasonable expenses and reasonable attorney's fees against plaintiff, Julian I. Richards, and in support thereof respectfully represents under this Honorable Court as follows:

1. That plaintiff has initiated this caveat proceeding against the defendant, David B. Nicholson, Personal Representative of the Estate of Elizabeth Ann Richards,

in bad faith and without substantial justification.

2. That on July 2, 1984, Julian I. Richards filed a Verified Petition to Caveat the Estate of Elizabeth Ann Richards. In that Petition to Caveat, Mr. Richards alleged every conceivable ground to contest a Will in Maryland. However, Mr. Richards has failed to include in the Petition any factual allegations which would support any of the grounds alleged.

The Office of Register of Wills
for Montgomery County
Room 322
50 Courthouse Square

Rosalie A. Reilly
Register of Wills

Rockville, Maryland

Telephone 301-251-7150

Audit Request

To: David B. Nicholson, Esq.

Date: 2-29-88

Estate of: Elizabeth A. Richards

Adm. No. 008-01-84

To complete the audit of the recently filed account, the following must be submitted:

____ Vouchers

____ Evidence of payment or formal disallowance of unsatisfied claim described as folows:
(See Estates & Trusts 8-107)

____ Certificate of Notice of account
(See Estates & Trust 7-301)

____ Certificate of Notice of petition for fees and/or commissions (Pursuant to Estates & Trust 70502, interested persons must be notified that requests

for hearing may be made within 20 days.)

____ Verification of the following documents: (See Estates & Trusts 1-102)

____ Verified petition(s) and order(s) for fees and/or commissions

____ Itemized statement of reconciled balanced forward reflecting the carrying values of assets remaining in the estate.

____ Restated account

____ Costs and taxes in the amount of: (Interest at 12% per annum will accrue on inheritance tax if not aid within 30 days.)

____ Other: This office has received a copy of Julian Richards' Application for Extension of Time... filed in the U.S. Supreme Court (copy enclosed for your records). In light of this latest

development, the final account can not be submitted to the Court for approval until you file documents setting forth the final disposition of this case.

Please refer all questions to the auditor.

Rosalie A. Reilly
Register of Wills

By: Bill Schwartz
Auditor

STATE OF MARYLAND

IN THE MATTER OF THE ESTATE OF ELIZABETH A. RICHARDS, Deceased	))))	In the Circuit Court for Montgomery County, Sitting as the Orphans' Court Case No. 008-01-84

To the Honorable Judges of said Court:

The Seventh and Final account of David B. Nicholson, Personal Representative of the Estate of Elizabeth A. Richards, late of Chevy Chase, deceased.

	Assets Received	Disbursements
This accountant charges himself with assets reserved for future accounting in his sixth accounts as follows:		
400 shares, common stock, American Brands, Inc.	$11,837.50	

	Assets Received	Disbursements
400 shares, common stock, Mobil Corp.	$11,125.00	
1200 shares, common stock, Potomac Electric Power Co.	12,937.50	
1670 shares, common stock, Washington Gas Light Co.	24,632.50	
18352 Units, The Government Securities Income Fund GNMMA Series G (12.61%)	15,502.75	
20 Limited Partnership Units, Angeles Income Properties, LTD II	10,000.00	

	Assets Received	Disbursements
$20,000 Federal National Mortgage Association, 16.375%, due 8/10/88	$23,260.00	
Tangible personal property, excluding automobile	11,104.00	
Certificate of Deposit No. 813-451-0, Citicorp Savings	100,000.00	
Certificate of Deposit No. 07-902-343-1, Washington Federal Savings Bank	93,121.50	
Amount carried forward	$313,520.75	

VERIFICATION AND CERTIFICATION

The undersigned, David B. Nicholson, declares under the penalties of perjury that the aforegoing account is just and true as stated, and that he has paid or secured the payment of every sum or sums for which he craves an allowance, which, after examination is passed by order of the Court.

The undersigned Personal Representative of the estate of the within-named decedent further declares under the penalties of perjury that he has mailed to Mark Allen Richards and Sallie Scott, the only Persons having an interest in the estate, a notice stating that "The Seventh and Final Account of David B. Nicholson, Personal Representative of the Estate of Elizabeth A. Richards, deceased, will be filed by the Personal Representative with the Register of Wills for Montgomery County, Room 322,

50 Courthouse Square, in Rockville, Maryland, on or before February 1, 1988, in whose office it may be examined by any Interested Person during normal business hours."

Dated: January 25, 1988

/S/
David B. Nicholson

Attorney: Beckett, Cromwell & Myers, P.C.

by: /S/
David B. Nicholson
4530 Wisconsin Avenue, N.W.
Suite 250
Washington, D. C. 20016

IN THE CIRCUIT COURT FOR

MONTGOMERY COUNTY, MARYLAND

Sitting as the Orphans' Court

This ____ day of _____, 1988, the foregoing Seventh and Final Account of David B. Nicholson, Personal Representative of the Estate of Elizabth A. Richards, was examined and approved by the Court and is hereby admitted to record and upon his making distribution in accordance therewith, he and his surety shall be dischargd of further responsibility and liability.

_____
J U D G E